THE UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

ASTORIA METAL CORPORATION,
LONG BEACH[1]

Employer

and Case 21-RC-20138

DISTRICT LODGE 4, INTERNATIONAL
ASSOCIATION OF MACHINISTS AND
AEROSPACE WORKERS, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

[1] The name of the Employer appears as amended at the hearing.

3. Petitioner and the Intervenor[2] are, and each of them is a labor organization within the meaning of Section 2(5) of the Act and each seeks to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time welders, fitters, electricians, ship repair generals, including welders, crane operators, dock men, electricians, shipwrights, laborers, shop and marine machinists (inside and/or outside machinists), material handlers, pipefitters, painters, machine operators, pneumatic mechanics, riggers, sheet metal mechanics, shipfitters, tool room keepers, maintenance employees and insulators, employed by the Employer at its facility located at 515 Pier T Avenue, Long Beach, California; excluding all other employees, office clerical employees, guards, and supervisors as defined in the Act. [3]

Contrary to the Employer and the Intervenor, the Petitioner seeks to exclude employee Thomas Lewis from the unit on the basis that he is a supervisor within the meaning of Section 2(11) of the Act, and to exclude employee Dale Wills on the basis that he is a managerial employee. In addition, contrary to the Employer and the Intervenor, the Petitioner seeks to exclude Luis Montes, Raymond Nowell, Dan Garcia, and Dale Wills from the unit, contending that by virtue of their assignment to the Employer's San Francisco facility they are not employed in the bargaining unit. Finally, contrary to the Employer and the Intervenor, the Petitioner also

[2] International Brotherhood Of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers, AFL-CIO appeared as an Intervenor. Intervenor status was granted at the hearing based on a sufficient showing of interest.
[3] The unit description is as stipulated by the parties. The parties also stipulated that it is a unit appropriate for collective-bargaining purposes.

seeks to exclude employee John Chapman from the unit, contending that he is on loan from the Employer's San Francisco facility and that he is therefore not in the unit.

The Employer is engaged in the business of ship repair and scrapping for commercial organizations at a facility located at 515 Pier T Avenue, Long Beach, California, herein called the Long Beach facility. The Employer is a subsidiary of Astoria Metal Corporation, San Francisco, herein called the San Francisco parent corporation, which operates another facility located in Hunter's Point, San Francisco.

The Employer has occupied the Long Beach facility since about August 1999.[4] General Manager John Pickering, herein called Pickering, is the highest ranking management official at the Long Beach facility.[5] Subordinate to Pickering are Deputy General Manager Ronald Matsui, herein called Matsui; Facilities' Manager Harry Bordner, herein called Bordner; and Dry Dock Supervisor Ken Rivers, herein called Rivers; [6]

The record reveals that at the time of the hearing, the Employer had only one ongoing job project, performing work for the Boeing Company. Pickering assigned Matsui to oversee employees Dale Wills, John Chapman, Tommie Williams, Rodrigo Clima, Donald Mearday, Foaiatu Tautolo and Thomas Lewis, to perform work on the Boeing project. John Chapman, herein called Chapman, works as a tool room attendant. Employee Dale Wills, herein called Wills, works as a pipefitter and runner or errand employee. Tommie Williams, herein called Williams; Rodrigo Clima, herein called Clima; and Donald Mearday, herein called Mearday, all work as shipfitters. Finally, Foaiatu Tautolo, herein called Tautolo, works as a pipefitter.

[4] The record reveals that prior to that date, the Employer was located in a different facility also located in Long Beach.
[5] The parties stipulated that Pickering is a manager and that he therefore should be excluded from the unit.

Supervisory Status of Lewis

The record establishes that Thomas Lewis, herein called Lewis, was hired by Pickering on September 13, 1999, as a shipfitter work leader. At the time of Lewis' hire, Pickering instructed Lewis to "see to it" that the job tasks were accomplished, and to keep him informed of employee morale and any jobsite difficulties. Although Matsui visits the Boeing job site one to two times a day, Pickering had not visited the jobsite in the month preceding the hearing. The record indicates that the Employer relies on Lewis to oversee the Boeing job site and make sure the work is accomplished in accordance with the job order. If an employee is not performing well, Lewis is to inform Pickering, although the record does not reveal whether Lewis has so communicated to Pickering.

The record establishes that Lewis does not select which employee is assigned to the Boeing job. Lewis does not secure employees to work on the jobsite. If the Boeing job requires more employees, Lewis informs Pickering. Lewis has no authority to hire, fire, promote, demote, discipline, transfer, assign overtime, or grant time off to employees, and Lewis has never interviewed any applicant or reviewed any employment applications.

The record discloses that Boeing Representative Lionel Cherie, herein called Cherie, instructs the employees, including Lewis, on what job assignments need be completed. Cherie instructs the employees all at once – in a group. Lewis testified that, after receiving a job assignment from Cherie, he, Clima, Mearday, Williams, and Tautolo "put their heads together" and equally decide on how to complete the assignment. The employees also collectively decide the work schedule. The employees working on the Boeing job combined have more than 100

[6] The parties stipulated that Matsui, Bordner and Rivers have the authority to hire and fire employee, and are supervisors under the Act. I shall, therefore, exclude them from the unit.

years of experience in the industry.[7] Lewis testified that due to the employees' level of skill and experience, it is unnecessary to closely direct these employees' work. The record reveals that Lewis has the authority to direct employees to a different job task in an emergency situation, although the record does not reveal whether Lewis has ever done this.

The record establishes that in September 1999, during one of Flanders' and Lopez' visits to the Long Beach facility, Lewis told Flanders he was a member of management and not eligible to be in any bargaining unit. Lewis testified that at the time of the noted conversation, he assumed he had been hired as a supervisor.[8] Lewis further testified that subsequently, however, he was informed by Pickering that he was hired to fill the position of shipfitter lead – not supervisor.

About November 5, 1999, Lopez had a conversation with employee Clima at the Long Beach facility. According to Lopez, Clima asserted that he had been hired by Lewis. On two occasions, Lewis personally handed out payroll checks to employees, after receiving them from Matsui. Lewis is responsible for reporting to Pickering the daily hours worked by each employee.[9] Like the other employees, Lewis is paid hourly. Lewis receives no benefits not given to other employees.

Section 2(11) of the Act specifically excludes supervisors from coverage under the Act. Specifically Section 2 (11) reads:

[7] The record establishes that Williams has over 20 years' experience, Clima and Mearday each has 10 to 15 years' experience, Tautolo has over 30 years, and Lewis has nearly 30 years of experience.
[8] Lewis explained that he made this assumption because he had been a supervisor with his previous employer.

> The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Because supervisors are specifically excluded from protection under the Act, the Board will not construe supervisory status too broadly. Quadrex Environmental Co., 308 NLRB 101, 102 (1992) The primary indicia enumerated in Section 2 (11) are written in the disjunctive, therefore, possession of one is sufficient to confer supervisory status. DST Industries, Inc., 310 NLRB 957, 958 (1993). The Board will not confer supervisory status upon an employee whose exercise of authority is merely routine, clerical, perfunctory, or sporadic. Bowne of Houston, Inc., 280 NLRB 1222 (1986). The burden of proving supervisory status is on the party contending that such status exists. Bennet Industries, Inc., 313 NLRB 1363 (1994).

The Petitioner contends that Lewis is a Section 2(11) supervisor, citing Iron Mountain Forge Corp., 278 NLRB 255 (1986). In Iron Mountain, the Board held that the leadmen assigned and reassigned employees to jobs without prior consultation, monitored employees' work and corrected defects found, and orally warned employees who performed poorly. The Board also found that when hired, employees were told to obey their leadmen and employees viewed the leadmen as supervisors. The records does not disclose that Lewis

[9] The record does not disclose in what manner Lewis executes the reporting of hours. The record does not establish whether employees are required to work a certain amount of hours.

monitors and corrects the work of employees, issues oral warning or assigns work, and therefore, Iron Mountain is distinguishable from the instant case.[10]

The records discloses that Lewis is a shipfitter work leader. At the time Lewis was hired, Pickering instructed him to see to it that the job assignments were accomplished. Pickering relies on Lewis to oversee the Boeing jobsite. However, the record reveals that all of the Boeing employees are very experienced in the industry and need virtually no direction. Moreover, there is no record evidence to suggest that Lewis uses independent judgement in overseeing the Boeing job site. Hydro Conduit Corp., 254 NLRB 433, 437 (1981). After receiving job assignments from the Boeing representative, Lewis and other employees "put their heads together" and decide on how to complete the job. Lewis' position on how to complete the varying assignments are given no more weight that any other employee's views. Moreover, while the record reveals that Lewis has the authority to assign employees to a particular job in the event of an emergency, supervisory status will not attach to an employee who only exercises the questioned authority in an emergency or sporadic situation. Davis Memorial Goodwill Industries, 318 NLRB 1044, 1045 (1995).

Citing Clark & Wilkins Industries, Inc., 290 NLRB 106 (1988), Petitioner contends that because Lewis has the authority to report to Pickering problems with employees, this authority supports a finding of Lewis' supervisory status. In Clark & Wilkins Industries, the Board conferred supervisory status on leadmen who did not have the authority to hire or fire, but who reported to the employer the work performance of employees. However, the Board further based it findings of supervisory status on the fact that the leadmen assigned employees to job-sites, rotated employees to and from job tasks without prior consultation, decided when

[10] Furthermore, contrary to the Petitioner's assertion in brief, there is no record evidence that employees viewed Lewis as a supervisor.

employee took lunch and breaks, and when a particular job was finished. Id at 144-115. The record herein reveals that Lewis does not possess the authority bestowed on the leadmen in Clark & Wilkins. Furthermore, the record fails to demonstrate the types of problems Lewis is authorized to report, whether he has made any reports, or what, if anything, happened as a result of such reporting.

Finally the Petitioner cites Metalite Corp., 308 NLRB 266 (1992), in support of its contention. In Metalite, the employer empowered leadmen with the authority to issue disciplinary warnings, terminate employees and evaluate employees' work performance for raises and bonuses. Id at 274. The instant record is devoid of any evidence that the Employer entrusts Lewis with these powers.

The Petitioner also contends that employee Clima told Lopez that Lewis hired him, and that it is evidence that Lewis is a supervisor. Employee Clima did not testify, and Lewis testified that he never interviewed applicants or reviewed applications. Accordingly, the record fails to support the Petitioner's assertion.

Although Lewis concedes that at the beginning of his employment, he believed that he was hired as a supervisor, this confusion was cleared up by Pickering a few days after Lewis' hire. Inasmuch as supervisory status is determined by actual job duties, Lewis' subjective belief, in the first few days of his employment, is insufficient to establish supervisory status.

Finally, Lewis' duties seem fairly consistent with that of a leadperson. Supervisors are employees with "genuine management prerogatives" not "straw bosses, *leadmen* . . . and other minor supervisory employees." Chicago Metallic Corp., 273 NLRB 1677, 1688 (1985) (emphasis added). Therefore, based on the record as a whole, it is concluded that the

Petitioner has not meet its burden so as to establish that Lewis is a supervisor within the meaning of Section 2(11) of the Act. Chrome Deposit Corporation, 323 NLRB 961 (1997). Accordingly, I shall include him in the appropriate unit.

Status of Wills[11]

The records discloses that Wills collects mail, assists the clerical employees with the purchase of supplies, transports travelers from the airport, and conducts shipfitting work when available. The record establishes that on about September 14, 1999, during one of Flanders' and Lopez' visits to the Long Beach facility, they witnessed Wills distributing and collecting employment applications from prospective employees. Flanders and Lopez further observed Wills explaining to a group of approximately eight to ten applicants what criteria the Employer was looking for in prospective employees. Flanders and Lopez approached Wills concerning his status as a production and maintenance employee and Wills informed them that he was "on loan" from San Francisco and a member of management. On about September 17, 1999, Flanders and Lopez again visited Pickering at the Long Beach facility. The record establishes that during this visit, they observed Wills reading information from applications while a secretarial employees imputed the information into the computer.

The record reflects that on about September 21, 1999, Flanders and Lopez again visited the Long Beach facility to speak with Pickering. On their way to Pickering's office, they passed Lewis and two other employees exiting the building. After passing the employees they approached Wills and asked him if the Employer was hiring. Wills responded "we" just hired two employees.

[11] Wills did not testify at the hearing.

Pickering testified that approximately 2 to 3 weeks prior to the hearing, he "loaned" Wills to the San Francisco parent corporation to assist them in completing a job requiring the demolition of seven small fishing ships. Pickering testified that there is no definite date for the return of Wills to the Long Beach facility, but he estimated the work in question would be completed in a month. Prior to his departure from Long Beach, Wills was not given a specific date of his return. Wills receives his payroll check from the San Francisco parent corporation, but the Employer pays him travel expenses and a per diem.[12] Although Wills works in San Francisco, his personnel file is maintained at the Long Beach facility as he is still considered an employee of the Employer.

The record reveals that Flanders and Lopez once asked Wills whether the Employer "was hiring." Wills responded "we" just hired two fitters. Wills also identified himself to Flanders and Lopez as "a member of management" and therefore ineligible to be in a bargaining unit. Pickering testified that Wills has no authority to screen applicants.

With regard to Petitioner's contention that Wills is a supervisor, the foregoing factors relied on by the Petitioner establish, at best, secondary indicia of supervisory status. Although secondary indicia may be used to bolster supervisory status, the Board will not base a finding of such status on secondary indicia alone. The present record fails to establish that Wills possesses any primary indicia so as to deem him a supervisor. When there is no evidence that an employee possess any one of the primary indicia listed in Section 2(11), secondary indicia will not suffice a finding of supervisory status. J.C. Brock Corp., 314 NLRB 157, 159 (1994). Accordingly, the Petitioner has failed to sustain its burden to establish that Wills is a supervisor, and its contention is therefore rejected.

[12] See footnote 15, infra.

Petitioner also would exclude Wills as a managerial employee. Managerial employees are not specifically excluded in the Act. However, in NLRB v. Bell Aerospace Co., the Court held that given the legislative intent and consistent Board holdings, managerial employees are not covered by the Act. 416 US 267, 289, 85 LRRM 2945 (1974). Managerial employee status will be found if an employee effectuates management policies by expressing and making operative the decisions of his employer. NLRB v. Yeshiva Univ., 444 US 672, 103 LRRM 2526 (1980). I find that none of the factors noted by the Petitioner establish Wills as a managerial employee. Inasmuch as the record does not establish that Wills effectuates or makes operative management policies, I find he is not a managerial employee.

Based on the record as a whole, I find that the Petitioner has not meet its burden of proof that Wills is a supervisor within the meaning of Section 2(11) or a managerial employee. Accordingly, Wills will be included in the appropriate unit.

The next issue concerning Wills is whether he is actually employed in the petitioned-for bargaining unit. In Ra-Rich Manufacturing Corp., 120 NLRB 1444, 1447 (1978), the Board held "it is well settled that in order to be eligible to vote, an individual must be employed and working on the established eligibility date, unless absent for one of the reasons set out in the Direction of Election." The Board has defined "working" in the unit as the actual performance of bargaining unit work. Dyncorp/Dynair Services, 320 NLRB120 (1995). Examples of acceptable reasons for being absent during the eligibility period include being on sick or maternity leave, absent due to layoff, vacation, or on assignment to a nonunit position.

Employees who have been temporarily placed in a nonunit position still may be eligible to vote if they have a reasonable expectancy of returning to their former unit position.

Mrs. Baird's Bakeries, Inc., 323 NLRB 607 (1997). In Mrs. Baird's Bakeries, a truckdriver employee was transferred to a nonunit position after receiving a driving-while-intoxicated ("DWI") charge. At the time of the employee's transfer, he was told that the transfer was temporary. While employed in the nonunit position, the driver employee continued to wear his driver uniform and receive the higher driver wage rate. Additionally, the employer had a past practice of transferring driver employees charged with DWIs to nondriving positions pending the outcome of the DWI charges. Based on the foregoing, the Board held that the driver employee had a reasonable expectation of returning to his unit position of driver and therefore, overruled the challenge to his ballot. The Board specifically noted that the driver employee's transfer status was not open-ended with no reasonable expectation of return. Id at 607, fn. 9.[13]

The record establishes that Wills was transferred to complete work for the San Francisco parent corporation – a nonunit position. As Wills has been transferred to a nonunit position, the appropriate inquiry is whether Wills has a reasonable expectation of returning to his previous position at the Long Beach facility. Although there is no definite end date to Wills' San Francisco assignment, the record reveals that the work he is assigned to assist with is estimated to last only 1 month. Moreover, Wills remains on the Employer's employment books and is compensated on a per diem basis by the Employer. Finally, Pickering testified that any employee "on loan" could at any time ask to terminate his "on loan" status, and the employee would be returned to the Long Beach facility. Under these circumstances, it is concluded that

[13] In so noting the Board cited, as distinguishable, Sid Eland, Inc., 261 NLRB 11 (1982) and Vincent M. Ippolito, Inc., 313 NLRB 715 (1994). In Sid Eland, the employee in question was granted a leave of absence and was told by the employer that he could return to work if there was a position available. The employee gave the employer no indication when he would return to work. The Board determined that the leave of absence was too open-ended and therefore, sustained the challenge to his ballot. Similarly, in Vincent M. Ippolito, the employee in dispute was granted a leave of absence for an indefinite period of time to care for an ill relative. The employee later extended the leave of absence. The Board held that the employee had no reasonable expectation of recall. Further, where an employee leave is indefinitely extended, there can be no expectation of recall. Id. at 719, citing Yawman Erbe of California, 232 NLRB 935 (1977).

Wills has a reasonable expectation of returning to his unit position within a relatively short period of time. I shall, therefore, include him in the unit.

Status of Montes, Nowell and Garcia

The records discloses that the Employer hired employees Luis Montes, herein called Montes and Raymond Nowell, herein called Nowell, as welders, and employee Dan Garcia, herein called Garcia, as a shipfitter.[14] Each of them was paid by the Employer to complete the appropriate "prework" documents. At the time of the hearing, Garcia had been sent to assist the San Francisco parent corporation in completion of the same project to which Wills was assigned as noted above, while employees Montes and Nowell were preparing to leave for the same destination and purpose. The record discloses that neither Montes, Nowell or Garcia performed work at the Employer's Long Beach facility prior to beginning their work assignment at the San Francisco facility. Prior to leaving for San Francisco, none of the employees were given specific dates of return to Long Beach. All three employees will remain in San Francisco until completion of the noted job project or until they request to return to Long Beach or are needed by the Employer. While Montes, Nowell and Garcia's salaries are being paid by the San Francisco corporation during their assignment, the Employer pays each of them a travel expense and a per diem.[15] Montes', Nowell's and Garcia's personnel records are maintained at the Long Beach facility.

As stated above, "working" in the unit is defined as actual performance of bargaining unit work. The record indicates that, contrary to Wills' situation, Montes, Nowell and Garcia did not work in the petitioned-for bargaining unit prior to their transfer to San Francisco.

[14] None of these employees testified at the hearing.

[15] The records does not reveal the amount of the per diem. The record does not reveal whether the employees receive a travel expense only from Long Beach to San Francisco or a daily travel to and from their San Francisco job site. The record indicates that although the Employer does not pay the salary of the Wills, Montes, Nowell and

Montes, Nowell, and Garcia all were paid by the Employer for completing "prework" forms, e.g., W-4 documents. Employees who are hired but perform only "orientation" type work and no bargaining unit work at or by the end of the eligibility period are ineligible. Emro Marketing Co., 269 NLRB 926, fn. 1 (1984). The Employer has not issued Montes, Nowell, or Garcia a payroll check for work performed at the Long Beach facility. As the record illustrates, all three employees are paid and supervised by the San Francisco parent corporation. The record further indicates that the Employer does not have a definitive date as to when Montes, Nowell and Garcia will actually work in the Long Beach facility. It is also well established Board law that employees who are hired on or before the eligibility date but who do not commence actual work in the bargaining unit until after the date of the election, are ineligible to vote.[16] F & M Importing Co., 237 NLRB 628, 632-633 (1978); Greenspan Engraving Corp., 137 NLRB 1308, 1311 (1962).

Although Montes, Nowell and Garcia are paid travel and per diem, this still does not overcome the fact that they have not performed bargaining unit work. Accordingly, I find that as of the date of the hearing, Montes, Nowell, and Garcia were not employed and working in the unit, and that they were not absent for any legitimate reason. Therefore, I find that Montes, Nowell and Garcia, are ineligible voters unless and until they actually commence work in the unit during the below-described eligibility period.

Garcia, the Employer is billed for the employees' pay. As the billing is a "paperwork" billing, the Employer does not have to take money out of its treasury account and pay the San Francisco parent corporation.

[16] The record does not reveal specifically what Montes, Nowell and Garcia were told about when and if they would begin working at the Long Beach facility. Even had the record demonstrated that Montes, Nowell and Garcia had been instructed to report to the Long Beach, upon completion of the San Francisco assignment, this would not have been sufficient. In Edward Waters College, 307 NLRB 1321 (1992), an employee who for 9 years worked in non-unit positions with the Employer was granted a sick leave of absence. Prior to the leave, the employer informed the employee that upon her return, she would be placed in a unit position. The Board found the employee ineligible to vote for two reasons. First, the employee was on a sick leave of absence from the nonunit position, and as such was presumed to continue in that capacity when she returned. Second, the Board found it critical that the employee had not worked in the bargaining unit prior to her leave. Id at 1322. Accordingly, to be considered an eligible voter, an employee must have performed work in the bargaining unit during the eligibility period, not after.

Status of Chapman

Employee John Chapman, herein called Chapman, works as a tool room attendant and ensures that employees are equipped with the proper tools needed to complete the given job tasks.[17] During Flanders' and Lopez' September 21, 1999 visit to the Long Beach facility, Lopez approached and spoke to Chapman.[18] According to Lopez, Chapman stated that he was at the Long Beach facility "on loan" from the San Francisco parent corporation. Chapman denies making this statement and instead asserts he is an hourly employee who receives his paycheck from the Employer. Chapman asserts that he worked for the San Francisco parent corporation in November or December 1997, but has not worked for them since. Approximately 2 to 3 weeks after the September 21, 1999 visit, Lopez returned to the Long Beach facility to meet with Pickering. According to Lopez, Pickering confirmed that Chapman is "on loan" from the San Francisco parent corporation and not on the Employer's payroll. Pickering denies making this comment.

Based on the above-noted comments, the Petitioner contends that Chapman is not an employee of the Employer and is "on loan" from the San Francisco parent corporation. As is noted, Chapman and Pickering deny making the comments. To be eligible to vote an employee must be employed and working in the unit at the end of the eligibility period. The record establishes that Chapman performs work for the Employer at the Long Beach facility in a unit position for which he receives wages. The Petitioner's reliance on the alleged "admissions" by Pickering and Chapman are insufficient to counter the undisputed record establishing Chapman's

[17] The record reveals that Chapman also performs work as an organizer for the Intervenor. The record does not reveal whether Chapman is compensated by the Intervenor for his efforts.
[18] The record establishes that during this conversation, Flanders was not present as he was speaking with Pickering in his office.

status as a unit employee. Accordingly, Petitioner's contention is rejected and Chapman is therefore included in the appropriate unit.[19]

There are approximately seven employees in the unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are those employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by District Lodge 4, International

[19] Inasmuch as I have found a unit different than that requested by Petitioner, in accordance with established Board practice, I shall allow Petitioner 14 days from the date of the Decision and Direction of Election to perfect its 30-percent showing of interest in the unit. In the event Petitioner does not establish a proper showing of interest in the unit within the 14 day period, I shall dismiss the petition unless it is withdrawn. Should Petitioner not wish to participate in an election in the unit found appropriate herein, it may withdraw its petition, without prejudice, by giving notice to that effect to the Regional Director within 10 working days from the date of this Decision and Direction of Election.

Association Of Machinist and Aerospace Workers, AFL-CIO; by International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers, AFL-CIO; or by neither labor organization.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters in the unit and their addresses which may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, two copies of an alphabetized election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in Region 21, 888 South Figueroa Street, Ninth Floor, Los Angeles, California 90017, on or before December 15, 1999. No extension of time to file the list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement herein imposed.

NOTICE OF POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.21, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of 3 working days prior to the day of the election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by 5 p.m., EST on December 22, 1999.

DATED at Los Angeles, California, this 8th day of December, 1999.

/s/Victoria E. Aguayo
Victoria E. Aguayo
Regional Director, Region 21
National Labor Relations Board

177-8580-3600
362-6706
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